

Appl. No. : 09/873,339  
Filed : June 5, 2001

### **REMARKS**

The December 13, 2005 Office Action was based upon pending Claims 1-26. This Amendment amends Claims 1, 15, 21, 22, 23 and 25. Thus, after entry of this Amendment, Claims 1-26 are pending and presented for further consideration.

#### **Claim Rejections**

The Office Action objected to Claim 1 for an informality.

The Office Action rejected Claims 1-6, 15, 21-23 and 25 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office Action also rejected Claims 1-26 under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2002/0073046 to David ("the David Publication").

#### **Objection to Claim 1**

Applicant has amended Claim 1 to read "an interaction."

#### **Rejection of Claims 1-6, 15, 21-23 and 25 under 35 U.S.C. §112**

The Office Action rejected Claims 1-6, 15, 21-23 and 25 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

##### **Claims 1 - 6**

The Office Action rejected the term "substantially anonymously" as used in Claim 1 and dependent Claims 2-6. In response, Applicant has deleted this term from Claim 1. Accordingly, Applicant respectfully requests the Examiner to withdraw this rejection.

##### **Claim 15**

The Office Action rejected the term "potentially accesses" as used in Claim 15. The Office Action also stated that accessing the merchant web site by way of a proxy and using a protocol to bypass the proxy is vague. Furthermore, the Office Action rejected the term "said remote web site" as lacking antecedent basis.

**Appl. No.** : **09/873,339**  
**Filed** : **June 5, 2001**

In response, Applicant has deleted "potentially."

With respect to the rejection about the proxy and bypassing the proxy, Applicant respectfully asserts that the specification identifies the use of a proxy to access the merchant web site. By way of example, paragraphs [0016], [0032] and [0033] describe the proxy.

The concept of using a protocol to bypass the proxy is also described in the patent application. By way of example, paragraphs [0042] and [0043] describe the process for using a protocol to bypass the proxy. Thus, Applicant respectfully asserts that the claim language is neither vague nor contradictory.

In addition, Applicant has amended "said remote web site" to be "said remote location."

Accordingly, Applicant respectfully requests the Examiner to withdraw these rejections.

#### Claim 21

The Office Action rejected the term "potentially accesses" as used in Claim 21. The Office Action also stated that accessing the merchant web site by way of a proxy is vague. Furthermore, the Office Action rejected the term "said archiver server web site" as lacking antecedent basis.

In response, Applicant has deleted "potentially."

With respect to the rejection about the proxy and bypassing the proxy, Applicant respectfully asserts that the specification identifies the use of a proxy to access the merchant web site. By way of example, paragraphs [0016], [0032] and [0033] describe the proxy.

The concept of using a protocol to bypass the proxy is also described in the patent application. By way of example, paragraphs [0042] and [0043] describe the process for using a protocol to bypass the proxy. Thus, Applicant respectfully asserts that the claim language is neither vague nor contradictory.

**Appl. No.** : **09/873,339**  
**Filed** : **June 5, 2001**

In addition, Applicant has amended "said archiver server web site" to be "said archiver web site."

Accordingly, Applicant respectfully requests the Examiner to withdraw these rejections.

**Claim 22**

The Office Action rejected the terms "said profile manager" and "said archiver server web site" as lacking antecedent basis. In response, Applicant has amended "said profile manager" to be "said machine data profile" and amended "said archiver server web site" to be "said archiver web site." Accordingly, Applicant respectfully requests the Examiner to withdraw these rejections.

**Claim 23**

The Office Action rejected the term "said archiver server web site" as lacking antecedent basis. In response, Applicant has amended "said archiver server web site" to be "said archiver web site." Accordingly, Applicant respectfully requests the Examiner to withdraw these rejections.

**Claim 25**

The Office Action rejected the term "potentially accesses" as used in Claim 25. Furthermore, the Office Action rejected the term "said archiver server web site" as lacking antecedent basis.

In response, Applicant has deleted "potentially." In addition, Applicant has amended "said archiver server web site" to be "said archiver web site." Accordingly, Applicant respectfully requests the Examiner to withdraw these rejections.

**Rejection of Claims 1-26 under 35 U.S.C. §102(e)**

The Office Action rejected Claims 1-26 under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2002/0073046 to David ("the David Publication").

**Appl. No.** : **09/873,339**  
**Filed** : **June 5, 2001**

### **The David Publication is a Continuation-In-Part Application**

The David Publication was filed in June 6, 2001 and is a continuation-in-part of U.S. Patent Application 09/500,601 filed on February 8, 2000. Because the David Publication is a continuation-in-part, the disclosure added in the continuation-in-part on June 6, 2001 should not be relied upon by the Examiner as this added disclosure does not predate Applicant's disclosure under § 102(e).

### **The Rejection Should Not Rely On The Added Continuation-In-Part Text**

In order to reject the currently pending claims under § 102(e), the Examiner should only rely on text that was pending prior to Applicant's priority date. Accordingly, Applicant respectfully requests the Examiner identify the relevant portions of the disclosure of the David Publication that have a priority date prior to Applicant's priority date.

In particular, the Examiner relies on [0075], [0076], [0133], [0139] and [0165] of the David Publication as teaching the step of associating the interaction identification string with the machine fingerprint. Pars. [0075], [0133], [0139] and [0165] are:

[0075] 2) The AA's action is described below. In the present embodiment the AA is a COM object which creates a "digital fingerprint" consisting of various identifying hardware characteristics which it collects from the user's PC, as well as passwords (to be described further). Activation of the account initiates a process by which the TB records a fingerprint for the user, which the AA has derived, including a unique identification ("UID") for the user, using the identifying characteristics of user's PC (e.g., CPU ID number, hard disk serial number, amount of RAM. BIOS version and type, etc.).

[0133] Now that a secure channel exists, the listener on the TB sends a dynamically generated DLL to collect the home user's hardware signature information. This DLL is unique to each transaction. It returns signature in a string which is uniquely scrambled for each transaction and encrypted.

[0139] In the ISP and other E-commerce models. payment details and credit availability must be validated in addition to user identity. In addition to the customer's account ID, machine ID, Listener ID, provider ID and transaction ID mentioned above, the Vendor passes the payment details (invoice number, invoice amount, currency) to the TB's authentication server. A new pop-up window is sent to the user on the secure channel previously established by Pay, asking him to authorize the invoice details. (As noted above, if the user does not answer within the set period of time, or rejects the transaction, the process is stopped and the thread dies). If the user accepts the transaction by clicking on the "Accept" button. TB's authentication server contacts a Payment server, and verifies that the user has credit available. If so, a transaction debiting the user and crediting the vendor is issued to the customer's chosen financial provider. Lastly, the TB notifies the vendor that the transaction is valid and the customer that a successful transaction has been completed. Optionally, the TB may send the customer an SMS message notifying him of the transaction.

[0165] The fingerprint mechanism of the present invention can be adapted for use to ensure ownership rights in downloaded copyrighted material, such as content files which includes MP3 music files, e-books, graphic files, and the like. In the event a content file is to be purchased by a user, for example, if a user orders an MP3 file, the user is directed to a URL address for downloading the file. The digital fingerprint provided by the smart DLL in the user's PC is incorporated into code in the content file itself. Thus, the file is only downloadable if the fingerprint information encoded into the file matches that of the user's PC. Additionally, the content file can be encoded to limit how and where the downloaded file can be accessed and operated. The encoding can determine whether or not the file can be transferred to a limited number of other PC. Alternatively, the ID is associated with a diskette, as described herein

**Appl. No.** : **09/873,339**  
**Filed** : **June 5, 2001**

above, and may be transferred to a limited number of PC's or perhaps only to one other MP3 player (or PDAs in the case of an e-book).

It is unclear to Applicant, however, the specific priority date that these paragraphs are entitled to have. Indeed, it appears that this text is not entitled to the earlier filing date relied upon by the Examiner. Thus, Applicant respectfully requests that the Examiner provide a basis for why this text in this continuation-in-part David Publication is entitled to the priority date relied upon by the Examiner to reject the claims.

If the text cited by the Examiner is not entitled to the priority date, the David Publication cannot be relied upon to teach the association of a machine fingerprint with an interaction identification string. Furthermore, if the text cited by the Examiner is not entitled to the priority date, the David Publication fails to teach the association of a machine fingerprint with an interaction record.

Accordingly, Applicant asserts that the rejection of Claims 1-26 under 35 U.S.C. §102(e) is improper and respectfully requests allowance of Claims 1-26.

### **Correspondence**

Applicant respectfully notes that Applicant filed a Revocation and Power of Attorney on May 27, 2004. Unfortunately, the Office Action dated December 13, 2005 was mailed to Applicant's previous counsel. Therefore, Applicant respectfully requests that future correspondence be directed to Knobbe, Martens, Olson and Bear.

### **Conclusion**

Although amendments and cancellations have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments and cancellations are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Furthermore, any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

Appl. No. : 09/873,339  
Filed : June 5, 2001

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved. Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 4-13-06

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